

**TOWN OF AMHERST REGULATION
SMOKING DISCLOSURE IN MULTI-UNIT RENTAL RESIDENCES**

SECTION 1 - PURPOSE

The purpose of this regulation is to provide tenants with information regarding smoking policies in their rental unit(s), thus allowing tenants, and prospective tenants, to make informed decisions regarding their potential for exposure to secondhand smoke in their homes. These regulations require landlords owning buildings containing three or more units to document and disclose to their tenants, and prospective tenants, their smoking policy.

SECTION 2 - AUTHORITY

This regulation is promulgated under the authority granted to the Amherst Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that "[b]oards of health may make reasonable health regulations." It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(2)(j) which states in part that "[n]othing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or . . . health . . . regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth."

SECTION 3 - FINDINGS

The Amherst Board of Health hereby finds and declares as follows:

WHEREAS, tobacco use and exposure to secondhand smoke cause death and disease and impose great social and economic costs, as evidenced by the following:

- more than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable deathⁱ; and
- the United States Environmental Protection Agency has found secondhand smoke to be a risk to public health and has classified secondhand smoke as a group A carcinogen, the most dangerous class carcinogen;ⁱⁱ and
- secondhand smoke exposure causes as many as 300,000 children in the United States under the age of 18 months to suffer lower respiratory tract infections, such as pneumonia and bronchitis;ⁱⁱⁱ exacerbates childhood asthma; and increases the risk of acute, chronic, middle-ear infections in children;^{iv} and
- cigarettes, cigars, pipes and other smoking materials are the leading cause of fire deaths in the United States,^v causing an estimated 31,200 structure fires and 830 deaths in 2001;^{vi} and
- 83.6% of Massachusetts adults are non-smokers;^{vii} and
- secondhand smoke can seep under doorways and through wall cracks and contaminate the air in common areas and other units;^{viii} and

- Massachusetts law declares that boards of health must examine all nuisances, sources of filth and causes of sickness within its municipality and shall destroy or prevent same and make regulations for public health and safety relative thereto.^{ix}

THEREFORE, the Board of Health enacts this regulation to protect the health of tenants in the town of Amherst.

SECTION 4 – DEFINITIONS

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise:

“At-Will” means an agreement, written or verbal, between a tenant and a landlord, allowing the tenant to occupy a rented premises without a lease and to pay rent periodically, typically monthly.

“Enclosed” means a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by 1 or more doors, including but not limited to a function room or hallway.

“Landlord” means any person, corporation, partnership or other legal entity that holds legal title to any Multi-Unit Rental Residence who shall be ultimately responsible for compliance with these regulations.

“Multi-Unit Rental Residence” means any enclosed structure or building that contains three (3) or more units that are used for residential purposes with at least one unit available for rent.

“Smoking” or “smoke”, means the lighting or possession of a lit cigar, cigarette, pipe or other tobacco product that is designed to be combusted and inhaled.

“Unit” means: (1) a dwelling space consisting of essentially complete independent living facilities for one or more persons, including, for example, permanent provisions for living and sleeping, and any private outdoor spaces like balconies and patios; and (2) senior citizen housing and single room occupancy housing, even where lacking private cooking facilities or private plumbing facilities. “Unit” does not include lodging in a hotel, motel or in college/university dormitories.

“Tenant”, means the person(s), corporation, partnership or other legal entity having occupancy and/or possession of any Unit in a Multi-Unit Rental Residence whether under written agreement, tenancy at will, tenancy at sufferance or otherwise.

“Tenancy at Sufferance”, means the tenant remains in possession of the rental property, even after the end of the lease, until the landlord either acts to evict the tenant or impose a new lease on the tenant.

SECTION 5 – NOTIFICATION OF SMOKING POLICY FOR RENTERS

Landlords of Multi-Unit Residences are hereby required to document smoking-related policies for their Multi-Unit Residences, indicating that smoking is either allowed or prohibited within units of the Multi-Unit Residence. If smoking is allowed on the premises, then the location of all areas in which smoking is allowed must be documented and communicated to current and prospective tenants, as follows:

- A) Initial disclosure of the smoking-related policy shall be provided to prospective tenants, in writing, prior to entering a rental agreement.
- B) Initial disclosure or disclosure of a change in the smoking-related policy shall be provided to continuing tenants, in writing, prior to renewal of the next rental agreement, in a time period no less than the time period required to terminate the rental agreement.
 - (1) If smoking is permitted in one or more units of a Multi-Unit Rental Residence, the disclosure shall identify the location of the designated smoking and non-smoking units with a floor plan.
 - (2) A copy of the floor plan will be placed on file with the landlord, and will be available to the Board of Health upon its request.
- C) An increase in the number of designated smoking units or changes in location of designated smoking units within the Multi-Unit Residence can only be implemented after the lease or "at-will" agreement expires for all tenants who have been notified of the anticipated change according to paragraph B.
- D) The notification requirements of Paragraphs A, B and C do not apply if smoking is prohibited throughout the Multi-Unit Residence, including in all individual units.
- E) The Board of Health may prescribe formatting and content requirements for notification and documentation of smoking-related policies.
- F) Any notification regarding the presence of secondhand smoke, including any notification required hereunder, shall not constitute a waiver, in part or in whole, of a resident's legal or equitable rights relating to the exposure to secondhand smoke. Nor shall a resident be deemed to have assumed the risk of being exposed to secondhand smoke, at any level.
- G) This regulation in no way affects the prohibition of smoking in elevators, hallways, staircases and related common areas of Multi-Unit Residences, as established under M.G.L. Ch. 270 §22.

SECTION 6: ENFORCEMENT

- A) An owner, manager, or other person in control of a building, multi-unit residence or premises who fails to abide by the notification or disclosure requirements of this regulation shall be punished by a fine of:
 - (1) \$100 for the first violation;
 - (2) \$200 for a second violation occurring within 2 years of the date of the first offense; and
 - (3) \$300 for a third or subsequent violation occurring within 2 years of the second violation.
- B) Each calendar day on which a violation occurs shall be considered a separate offense.
- C) This regulation shall be enforced by the Board of Health and its designees.

- D) Violations of Section 5 may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.
- E) If an owner, manager or other person in control of a building, multi-unit residence or premises violates this regulation repeatedly, the Board of Health may revoke or suspend any license or permit it issues to the building, multi-unit residence or premises. The Amherst Board of Health shall provide notice of the intent to suspend a license or permit, which notice shall contain the reasons therefore and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The owner, manager or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the decision of the Board of Health, and the reasons therefore in writing. After a hearing, the Amherst Board of Health may suspend the license or permit if the Board finds that a violation occurred.
- F) Any person may register a complaint with the Amherst Health Department to initiate an investigation into a possible violation of the notification or disclosure requirement.

SECTION 7: SEVERABILITY

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions.

SECTION 8: CONFLICT WITH OTHER LAWS OR REGULATIONS

Notwithstanding the provisions of Sections 5 and 6 of this regulation nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire health or other regulations.

SECTION 9: EFFECTIVE DATE

This regulation shall be effective as of February 1, 2011.

This regulation passed by unanimous vote of the Amherst Board of Health on September 30, 2010.

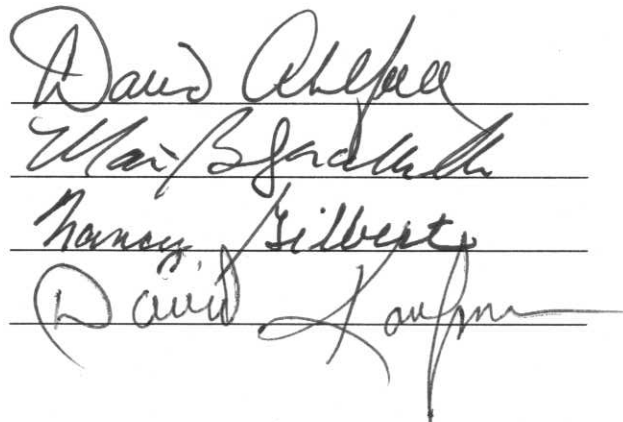
Board of Health Members:

Chairman David Ahlfeld

Maria Bulzacchelli

Nancy Gilbert

David Kaufman M.D.



ENDNOTES

- ⁱ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Reducing Tobacco Use: A Report of the Surgeon General* at 437 (2001), available at http://www.cdc.gov/tobacco/sgr/sgr_2000/chapter8.pdf (last accessed March 23, 2005).
- ⁱⁱ Nat'l Cancer Inst., *NCI Health Information Tip Sheet for Writers: Secondhand smoke*, available at <http://www.cancer.gov/newscenter/tip-sheet-secondhand-smoke> (last accessed February 28, 2005).
- ⁱⁱⁱ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Death 2002* at 2 (2004), available at http://www.cdc.gov/nccdphp/aag/aag_osh.htm (last accessed April 6, 2005).
- ^{iv} U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Exposure to Environmental Tobacco Smoke and Cotinine Levels — Fact Sheet* (2004), available at http://www.cdc.gov/tobacco/research_data/environmental/factsheet_ets.htm (last accessed April 6, 2005).
- ^v Bruce N. Leistikow, M.D., M.S., Daniel C. Martin, Christina E. Milano, *Fire Injuries, Disasters, and Costs from Cigarettes and Cigarette Lights: A Global Overview* 91 PREVENTIVE MEDICINE 31 at 91 (2000), available at <http://leistikow.ucdavis.edu/SmokingFires.pdf> (last accessed April 6, 2005).
- ^{vi} National Fire Port. Ass'n. *The Smoking-Material Fire Problem*.
- ^{vii} Mass. Department of Public Health, 2008.
- ^{viii} J. Wagner et al., *Environmental Tobacco Smoke Leakage from Smoking Rooms*, JOURNAL OF OCCUPATIONAL AND ENVIRONMENTAL HYGIENE, 1:110–118 (2004), available at <http://eetd.lbl.gov/IEP/pdf/LBNL-51010.pdf> (last accessed April 7, 2005).
- ^{ix} M.G.L. Ch. 111, §122.